

CITY OF LINCOLN/LANCASTER COUNTY

# **CONTRACT AWARD NOTIFICATION**

## **SPECIFICATION NO.05-029**

### **ANNUAL REQUIREMENTS FOR SUPPLYING & HAULING OF AGGREGATE SURFACING MATERIALS**

**DATE:** May 23, 2005

**CONTRACT PERIOD:** June 1, 2005 thru December 31, 2005

**CONTRACTOR:** Westover Rock & Sand, Inc.  
7800 Hwy.50  
Weeping Water, NE 68463

**PURCHASING DIVISION**  
**K-STREET COMPLEX**  
**440 SOUTH 8<sup>TH</sup> STREET**  
**LINCOLN, NEBRASKA 68508**  
**(402) 441-7410**

**Company Representative:** Vern Westover  
**Telephone No.:** 402/267-7765  
**FAX No.:**  
**E-Mail Address:**

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THE CITY/COUNTY'S SPECIFICATIONS AND THE CONTRACTOR'S ACCEPTED PROPOSAL AND PRICING SCHEDULES, NOW ON FILE IN THE OFFICE OF THE CITY CLERK AND/OR THE COUNTY CLERK, ARE ADOPTED BY REFERENCE AND ARE AS FULLY A PART OF THIS CONTRACT FOR THE ABOVE-NAMED COMMODITY AS IF REPEATED VERBATIM HEREIN.

#### **Item 9**

NO ACTION NEED BE TAKEN BY THE CONTRACTOR AT THIS TIME. ORDERS FOR MATERIAL WILL BE MADE AS NEEDED BY THE VARIOUS CITY/COUNTY DEPARTMENTS.

DEPARTMENTS REQUIRING CATALOGS AND/OR PRICING SCHEDULES SHALL NOTIFY THE CONTRACTOR DIRECTLY.

F/files/sharpurc/awardnotifications/co05029w

E.O. # 73058  
Dated:4/28/05

**CONTRACT DOCUMENTS**

**CITY OF LINCOLN**

**NEBRASKA**

**ANNUAL CONTRACT FOR SUPPLYING & HAULING OF  
AGGREGATE SURFACING MATERIALS  
AS PER SPECIFICATION 05-029**

**Contractor: WESTOVER ROCK AND SAND INC.**

*copy to  
original*

**CITY OF LINCOLN, NEBRASKA  
CONTRACT AGREEMENT**

THIS CONTRACT, made and entered into this 22 day of February, 2005, by and between Westover Rock & Sand Inc. hereinafter called contractor, and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called the City.

WITNESS, that:

WHEREAS, the City has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit: Annual Requirements for Supplying Hauling of Aggregate Surfacing Materials (Items 9) and,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the City, in the manner and at the time specified, a sealed Proposal in accordance with the terms of said advertisement; and,

WHEREAS, the City, in the manner prescribed by law has publicly opened, read aloud, examined, and canvassed the Proposals submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal, a copy thereof being attached to and made a part of this Contract;

**EQUAL EMPLOYMENT OPPORTUNITY:** In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the agreements herein contained, the Contractor and the City have agreed and hereby agree as follows:

- 1 General Description. The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents.
- 2 Term of the Agreement. Term of the Agreement shall be one year as twelve (12) consecutive months, and shall be June 1, 2005 through December 31, 2005.
  - 2.1 At the City's request, with the Contractor's consent, the agreement shall be renewable for two (2) each additional one (1) year periods with any extensions as mutually agreed.
  - 2.2 The City shall notify the Contractor of any determination to extend this Agreement no less than thirty (30) days prior to the beginning of the relevant optional year.
- 3 Governing Laws. The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this agreement.

4. Confidentiality. If and to the extent, and so long as, required by the provisions enacted by the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, but not otherwise, Contractor does hereby assure the City that Contractor will appropriately safeguard protected any health information made available to or obtained by Contractor.
  - 4.1 In implementation of such assurance and without limiting the obligations of Contractor otherwise set forth in this Agreement or imposed by applicable law, Contractor hereby agrees to comply with applicable requirements of law relating to protected health information and with respect to any task or other activity Contractor performs on behalf of the City.
  - 4.2 At termination of this Agreement, Contractor shall return or destroy all protected health information received from City that Contractor still maintains in any form and retain no copies of such information.
  - 4.3 The Parties agree that this Agreement may be amended from time to time if and to the extent required by the provisions of 42 U.S.C. 1171 et seq. enacted by the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, in order to assure that this Agreement remains consistent therewith.
5. Quantity Requirements. The City reserves the right to modify the quantity ordered, and to purchase current technology at negotiated prices. Implementation will be in accordance to the time line as agreed with the Contractor.
6. Equal Employment Opportunity. In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.
7. Compensation. The City shall pay for purchased services and equipment at the rates as set . Payment will be made, unless otherwise stated, within thirty (30) calendar days after acceptance and proper invoicing by the Contractor. No increase above said bid price will be allowed to the Contractor during the term of the contract unless and except as provided by the specifications.

8. Invoices. Contractor shall, within fifteen (15) working days following the last day of each calendar month in which services were provided, submit an invoice and request for payment on an invoice form acceptable to the City. The invoice shall itemize: 1) the hours of services or equipment rendered listed by classification, 2) the date such services were provided, 3) a general description of the services or equipment provided, 4) the name of client receiving services, 5) the amount and type of all reimbursable expenses being charged to the Contract, and 6) the dates of the performance period covered by the invoice.
9. Payment of Unauthorized Claims. The City may refuse to pay any claim that is not specifically authorized by this Contract. Payment of a claim shall not preclude the City from questioning the propriety of the claim. The City reserves the right to offset any overpayment or disallowance of claim by reducing future payments.
10. Termination. The Agreement may be terminated by the following:
  - 10.1 Termination for Convenience. The City reserves the right to terminate any part of or the entire contract that may result from this bid without cause and at any time provided the Contractor is given thirty (30) calendar days written notice. The Contractor may cancel said agreement upon ninety days written notice (to allow sufficient time for the City to secure another provider).
  - 10.2 Termination for Cause. The City may terminate the Contract if the Contractor:
    - 1) Refuses or fails to supply enough properly skilled workers or proper equipment to satisfactorily provide complete needs assessment as requested.
    - 2) Disregards laws, ordinances, or regulations or orders of a public authority having jurisdiction over the Contract.
    - 3) Otherwise commits a substantial breach of any provision of the Contract Document.
  - 10.3 Termination for insolvency of Contractor. Contractor shall be deemed to be insolvent if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition for bankruptcy has been filed, and whether or not insolvent within the meaning of the Federal Bankruptcy Law; the filing of a voluntary petition to have Contractor declared bankrupt; the appointment of a Receiver or Trustee for Contractor; or the execution by Contractor of a general assignment for the benefit of creditors
11. Payment Upon Early Termination. In the event this Contract is terminated before the completion of services, the City shall pay the Contractor for services provided in a satisfactory manner, a sum based upon the actual time/materials spent. In no case shall such payment exceed the total contract price.

- 12 Terms of Early Payment. The City and the Contractor shall have the following obligations upon termination:
- 12.1 The City must notify the Contractor in writing. Upon receipt of notice, the Contractor must cease all work and proceed to close out all operations.
  - 12.2 The Contractor must deliver all reports and estimates entirely or partially completed and all unused materials supplied by the City.
  - 12.3 The Contractor must appraise the work completed and submit the appraisal to the City for evaluation.
  - 12.4 The City will pay the Contractor a fee for the percentage of the work actually completed as payment in full for services rendered to the date of termination.
- 13 Insurance Requirements. Prior to commencement of any services, the Contractor shall provide the City with the requested insurance certificates. All required insurance policies, except Workers' Compensation and Professional Liability, must name the City of Lincoln as Additional Insured with regard to this project.
- 13.1 The Contractor must give the City thirty days written notice before cancelling any policy.
  - 13.2 The Contractor's failure to furnish evidence of insurance may be considered a breach of contract.
  - 13.3 The Contractor must require any subcontractors to provide Worker's Compensation and Employer's Liability with at least as much coverage as that provided by the Contractor.
- 14 Non-transferable Responsibilities. No assumption or takeover of any of Contractor's duties, responsibilities, or obligations, or performance of same by any entity other than Contractor whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration, for any reason whatsoever, may occur without City's express prior written approval.
- 14.1 If any such assumption, takeover, or unauthorized performance does occur without such prior written approval, this Agreement will become void for failure of its essential purpose. Such act is therefore a material breach of this Agreement, upon which City may pursue any lawful remedy.
- 15 Assignment and Subcontracting. Contractor shall not assign its rights, delegate its duties or subcontract any performance of our Agreement without the express prior written consent of City. Any assignment, delegation or subcontract without such express prior written consent shall be null and void and shall constitute a material breach of this Agreement, upon which City may immediately terminate the Agreement in accordance with the termination provisions as stated in this contract.

- 16 Time Is of the Essence. Time is of the Essence. If any anticipated or actual delays arise, Contractor shall immediately notify City. Regardless of notice if deliveries are not made at the time agreed upon, City may, at its sole discretion, terminate this Agreement and proceed pursuant to termination provisions as stated in this contract.
- 17 Independent Contractor Status. This Agreement is by and between City and Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between City and Contractor. The employees and agents of one party are not the employees or agents of the other party for any purpose whatsoever.
- 17.1 Contractor understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of worker's compensation liability, solely employees of Contractor and not employees of City. Contractor shall be solely liable and responsible for furnishing any and all workers' compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of Contractor hereunder.
- 17.1 The employees and agents of each party, shall while on the premises of the other party, comply with all rules and regulations of the premises, including, but not limited to, security and safety requirements.
- 18 Indemnification.
- 18.1 The Contractor shall indemnify and hold harmless the City, its members, its officers and employees from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees arising out of or resulting from the performance of the contract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than goods, materials and equipment furnished under this contract) including the loss of use resulting therefrom; is caused in whole or part by any negligent act or omission of the proposer, any subcontractor, or anyone directly or indirectly employed by any one of them or anyone for whose acts made by any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.
- 18.2 In any and all claims against the City or any of its members, officers or employees by an employee of the proposer, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 14.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the proposer or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

- 19     Insurance, Licenses and Bonds.  
19.1   The Contractor shall obtain whatever insurance, licenses and bonds and fulfill whatever other requirements as are required in order to perform this Agreement, and shall provide evidence of such insurance, licenses and bonds to the City.
- 20     Inclusion Of All Necessary Fees. The Contractor shall comply with all federal, state, and local laws together with all ordinances and regulations applicable to the services. The Contractor shall procure all licenses, permits, or other rights necessary for the fulfillment of its obligation under this agreement.
- 21     Proprietary Considerations and Data Security. Except for Contractor's work papers, the City and Contractor agree that all materials and information developed under this Agreement shall become the sole property of the City.  
21.1   Any materials and information not developed under this Agreement, which Contractor considers to be proprietary and confidential, shall be plainly and prominently marked by Contractor as "Trade Secret," "Proprietary," or "Confidential."  
21.2   City will use reasonable means to ensure that Contractor's confidential information is safeguarded and held in confidence. City agrees not to reproduce or distribute Contractor's proprietary material to non-Governmental agencies without prior written permission from Contractor. City's obligation pursuant to this Article shall not apply to any material, data or information not plainly and prominently marked with the restrictive legends as set forth in subsection 9.1, above.
- 22     Warranties. The Contractor, by entering into a contract with the City, warrants and represents that all materials, equipment, and service delivered to the City pursuant to the contract conforms to all of the specifications contained or referred to herein. The Contractor further guarantees to replace all materials, equipment, software, or service that may be rejected by the City due to defective materials or workmanship for a minimum of one year following final acceptance. Failure or neglect of the City to require compliance with any term or condition of the contract or specifications shall not be deemed a waiver of such term or condition.



- 23 Breach of Warranties. In the event of any breach of Contractor's warranties and/or covenants contained in this contract, or if, for any other reason, except only the fault of the City, the hardware, software or other services does not operate in accordance with the specifications provided in this contract and Contractor has not adjusted, or cannot adjust the same within fifteen (15) days after notice to Contractor, City shall have the right, at its option, to cancel this contract and to receive the return of all sums theretofore paid by City to Contractor for all non-consumable items and/or services, in addition to such other damages to which the City may be legally entitled. The Contractor's obligations under this agreement are in lieu of all other warranties expressed or implied.
- 24 Non-exclusiveness of Remedies. Any right or remedy on behalf of the City provided for in any part of these specifications, including, but not limited to, any guaranty or warranty or any remedy for Contractor's nonperformance, shall be in addition to and not a limitation of any right or remedy otherwise available by law, equity, or statute.
- 25 Notices. All notices or demands required or permitted to be given or made hereunder shall be in writing and shall be deemed to have been given if made by hand delivery with signed receipt, or when mailed by first class registered or certified mail, postage prepaid, addressed to the City and Contractor at their respective addresses designated below, or at such other address as the City or Contractor, as the case may be, shall have furnished in writing to the other.

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and the are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the City hereby agree that all the terms and conditions of this Contract shall by these presents be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the City do hereby execute this contract.

EXECUTION BY THE CITY OF LINCOLN, NEBRASKA

ATTEST:

City Clerk

Jean E. [Signature]



CITY OF LINCOLN, NEBRASKA

Mayor

Calvin J. [Signature]

Approved by Executive or No. 073058 dated 4-28-05

EXECUTION BY CONTRACTOR

IF A CORPORATION:

Westover Rock & Sand, Inc. (Name of Corporation)

7800 Hwy 50, Weeping Water, NE 68463 (Address)

ATTEST:

Chris Westover (SEAL)  
Secretary

By: Chris Westover  
Duly Authorized Official

V.P.  
Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

Westover Rock & Sand Inc.  
Name of Organization

Corp.  
Type of Organization

7800 Hwy 50, Weeping Water, NE 68463  
(Address)

By: Chris Westover  
Member

By: Jean Westover  
Member

COMPANY NAME Westover Rock & Sand, Inc

*original*

**PROPOSAL  
SPECIFICATION NO. 05-029**

**BID OPENING TIME: 12:00 NOON****DATE: February 02, 2005**

The undersigned bidder, having full knowledge of the requirements of the City of Lincoln for the below listed items and the contract documents (which include Notice to Bidders, Instructions to Bidders, this Proposal, Specifications, Contract, and any and all addenda) and all other conditions of the Proposal, agrees to sell to the City the below listed items for the performance of this Specification, complete in every respect, in strict accordance with the contract documents at and for unit prices listed below.

**THE ANNUAL REQUIREMENTS FOR:  
SURFACING AND BEDDING MATERIALS  
FOR ROAD CONSTRUCTION AND MAINTENANCE**

**BIDDING SCHEDULE**

<u>ITEM</u>	<u>ITEM DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>TOTAL</u>
<u><b>SOLID WASTE OPERATIONS</b></u>				
<u><b>F.O.B. BOTH LANDFILL LOCATIONS:</b></u>				
1.	1-1/2" CRUSHED ROCK FOR SURFACING	500 T	\$ <u>13.70</u>	\$ <u>6850.<sup>00</sup></u>
2.	2-1/2" CRUSHED ROCK FOR SURFACING	1000 T	\$ <u>13.70</u>	\$ <u>13700.<sup>00</sup></u>
3.	3-1/2" CRUSHED ROCK FOR SURFACING	1000 T	\$ <u>13.70</u>	\$ <u>13700.<sup>00</sup></u>
4.	3" CRUSHER RUN	1000 T	\$ <u>13.70</u>	\$ <u>13700.<sup>00</sup></u>
5.	3" CRUSHED CONCRETE	5000 T	\$ _____	\$ _____
6.	8" CRUSHED CONCRETE	1000 T	\$ _____	\$ _____
7.	36" CONCRETE RIP/RAP	500 T	\$ <u>19.50</u>	\$ <u>9750.<sup>00</sup></u>
8.	2" CRUSHED AND/OR MILLED ASPHALT	700 T	\$ _____	\$ _____

<u>ITEM</u>	<u>ITEM DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>TOTAL</u>
<b><u>SOLID WASTE OPERATIONS</u></b>				
<b><u>F.O.B. BOTH LANDFILL LOCATIONS:</u></b>				
9.	FINE AGGREGATE FOR ROAD SURFACING	250 T	\$ <u>7.50</u>	\$ <u>1875.<sup>00</sup></u>
10.	LIMESTONE SCREENINGS	300 T	\$ <u>9.50</u>	\$ <u>2850.<sup>00</sup></u>
\$	<b><u>F.O.B. 2400 THERESA STREET</u></b>			
11.	CRUSHED STONE FOR PIPE BEDDING	1600 T	\$ <u>13.05</u>	\$ <u>20880.<sup>00</sup></u>
12.	FILL SAND	100 T	\$ <u>6.25</u>	\$ <u>625.<sup>00</sup></u>

**PUBLIC WORKS DEPARTMENT**

**F.O.B. WEST MAINTENANCE DISTRICT:**

13.	1-1/2" CRUSHED ROCK FOR SURFACING	2,500 T	\$ <u>13.55</u>	\$ <u>33875.<sup>00</sup></u>
14.	FINE AGGREGATE	4,000 T	\$ <u>7.45</u>	\$ <u>29800.<sup>00</sup></u>

**F.O.B. N.E. MAINTENANCE DISTRICT:**

15.	FINE AGGREGATE	8,000 T	\$ <u>7.45</u>	\$ <u>59600.<sup>00</sup></u>
16.	COARSE AGGREGATE	1,500 T	\$ <u>13.50</u>	\$ <u>20250.<sup>00</sup></u>
17.	Gravel for Surfacing	1,000 T	\$ <u>10.25</u>	\$ <u>10250.<sup>00</sup></u>

**PRICE BASIS FOR OCCASIONAL DELIVERIES TO OTHER SITES:**

		<u>MATERIAL COST</u>	<u>TRUCK/ PUP</u>	<u>STRAIGHT TRUCK</u>
18.	1-1/2" CRUSHED ROCK FOR SURFACING	\$ <u>*</u> /T	\$ ____ /MI	\$ ____ /MI
19.	FINE AGGREGATE	\$ <u>*</u> /T	\$ ____ /MI	\$ ____ /MI
20.	COARSE AGGREGATE	\$ <u>*</u> /T	\$ ____ /MI	\$ ____ /MI
21.	GRAVEL FOR SURFACING	\$ <u>*</u> /T	\$ ____ /MI	\$ ____ /MI

\* Call for quotes as needed.

BID SECURITY REQUIRED:

Yes \_\_\_\_\_ Amount:  
No X

Special provisions for Commodity Term Contracts are included with the specification document. Bidders are urged to read the Special Provisions before completing the following sections of the Proposal.

Contract Extension Renewal is an option:

Yes X No \_\_\_\_\_

TERM PRICE CLAUSE: **BIDDER MUST STATE**

(a) Bid prices firm for the full contract period: X ; or

(b) Bid prices subject to escalation/de-escalation: \_\_\_\_\_.

(c) If (b), state period for which prices will remain firm: through \_\_\_\_\_.

COMPANY REPRESENTATIVE responsible for the administration of this Agreement:

NAME: Vern Westover  
TITLE: President  
PHONE NO: 402-267-7765

**AFFIRMATIVE ACTION PROGRAM:** Successful bidder will be required to comply with the provisions of the City's Affirmative Action Policy (Contract Compliance, Sec. 1.16). The Equal Opportunity Officer will determine compliance or non-compliance, upon a complete and substantial review of successful bidder's equal opportunity policies, procedures and practices. The undersigned signatory for the bidder represents and warrants that he has full and complete authority to submit this proposal to the City, and to enter into a contract if this proposal is accepted.

**RETURN 2 COMPLETE COPIES OF PROPOSAL AND SUPPORTING MATERIAL.  
MARK OUTSIDE OF BID ENVELOPE AS FOLLOWS:  
SEALED BID FOR SPEC. 05-029**

Westover Rock & Sand, Inc.  
COMPANY NAME

7800 Hurly St STREET  
ADDRESS or P.O. BOX

Weeping Water, NE 68463 CITY,  
STATE ZIP CODE

402-267-7765  
TELEPHONE

47-0813051  
EMPLOYER'S FEDERAL I.D. NO.  
OR SOCIAL SECURITY NUMBER

Vern Westover  
BY (Signature)

Vern Westover  
(Print Name)

President  
(Title)

1-28-05  
(Date)

As Requested  
ESTIMATED DELIVERY DAYS (After  
receipt of individual orders)

TERMS OF PAYMENT 100% - 30 days

Bids may be inspected in the Purchasing Division offices during normal business hours, after tabulation by the purchasing agent. If you desire a copy of the bid tabulation to be mailed to you, you must enclose a self-addressed stamped envelope with your bidding documents. Bid tabulations can also be viewed on our website at: [lincoln.ne.gov](http://lincoln.ne.gov) Keyword: bid